

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:12-CR-17-BO
No. 7:16-CR-31-BO

SHERWIN ARCHIE,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

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ORDER

This cause comes before the Court on petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. [DE 82]. The government filed a response, conceding that the relief which petitioner seeks is warranted. [DE 85].

BACKGROUND

Petitioner pled guilty pursuant to a plea agreement to one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g) and 924 (count one); one count of Hobbs Act robbery, in violation of 18 U.S.C. § 1951 (count two); and using and carrying a firearm in the commission of a crime of violence, in violation of 18 U.S.C. § 924(c) (count three). [DE 20, 51]. Petitioner noticed a direct appeal, and this Court's judgment was affirmed.

DISCUSSION


Petitioner contends that he is no longer properly classified as an armed career criminal in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015), and *Welch v. United States*, 136 S. Ct. 1257 (2016). In *Johnson*, the Supreme Court held that the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e), is unconstitutionally vague. 135 S.Ct. at 2557. In *Welch*, the Supreme Court held that *Johnson* applies retroactively on collateral review. 136 S.Ct. at 1265.

The government as well as petitioner argue that application of *Johnson* to petitioner's criminal history results in insufficient qualifying predicate convictions necessary to be sentenced as an armed career criminal under § 924(e). The Court agrees, and holds that resentencing of petitioner without application of the Armed Career Criminal Act is warranted.

CONCLUSION

Accordingly, for the foregoing reasons, petitioner's motion to vacate pursuant to 28 U.S.C. § 2255 is GRANTED. [DE 82]. Petitioner's sentence is hereby VACATED. Petitioner's earlier motions are DENIED AS MOOT. [DE 73, 77]. This matter shall be set for resentencing on counts one and two by separate notice.

SO ORDERED, this 22 day of June, 2016.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE